



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 31, 1994

Mr. Matthew Masek
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-526

Dear Mr. Masek:

The Harris County Juvenile Probation Department (the "department") received a request for information from a former employee. The department has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 26454.

The former employee has asked for a copy of his personnel file and any other records kept concerning his employment or termination, including a sign-in sheet for a night when the former employee left work early. The department contends that information that would identify juveniles held by the department is excepted from disclosure under section 552.101.¹ The department also asserts that all of the requested information is excepted from disclosure under section 552.103.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 51.14 of the Family Code provides for confidentiality of the department's records concerning juveniles in the department's custody. Records that concern these juveniles or that identify them are excepted from disclosure to the public. Open Records Decision No. 216 (1978) at 5. The department, therefore, must not release information that identifies juveniles in the department's custody. Gov't Code § 552.352.

You contend that section 552.103 is applicable to the other information. To show the applicability of section 552.103, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--

¹We note that in the information submitted to this office for review some information was marked out. We assume this was information that would have identified juveniles held by the department.

Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department has submitted to this office information showing that the former employee has filed a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") against the department. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103 test. Open Records Decision Nos. 386 (1983) at 2; 336 (1982) at 1. The department has also submitted to this office records that appear to be related to the litigation.²

However, many of these records may not be withheld from this requestor.³ Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The opposing party in the anticipated litigation is the former employee, who is also the requestor. Since this requestor has already had access to a number of documents submitted to this office, those documents may not be withheld under section 552.103. The documents which the requestor has seen or had access to include the court documents from prior lawsuits filed by the former employee;⁴ communications between the former employee and the department; work policies and guidelines given to all employees including the former employee; the former employee's own prior EEOC complaints and other work-related complaints filed by the employee; and his resume and job descriptions. We have marked documents which must be released because the requestor has seen or had access to them. If the requestor has seen or had access to other documents these also must be released. The department also must release official records of the public proceedings and actions of the commissioners court. Open Records Decision No. 221 (1979).

Although the department may not withhold records of public proceedings and actions and documents which the requestor has already had access to or seen, it may withhold under section 552.103 the other records submitted to this office for review.⁵

²You also sent a list of employee telephone numbers which does not appear responsive to the request. Please note that home telephone numbers and home addresses of public employees may be disclosed only in accordance with sections 552.117 and 552.024 of the Open Records Act.

³We note that some of this information concerning the requestor may be confidential and thus not available to the public even after litigation has concluded. See Gov't Code §§ 552.023, .352.

⁴You indicate that the department has copies of the pleadings and other documents related to two lawsuits filed by the former employee, both of which have concluded. You indicate that, due to the volume of records, you submitted representative copies to this office. It is apparent the requestor has already seen the pleadings and many of the other documents. We again note that documents to which the former employee has had access may not be withheld under section 552.103.

⁵Since the section 552.103 exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

The department has demonstrated that litigation is reasonably anticipated and that these records are related to the anticipated litigation. We note that the applicability of section 552.103 ends as to the non-confidential information once the requestor has obtained the information or once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 349 at 2, 350 at 3 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy".

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LRD/rho

Ref.: ID# 26454

Enclosures: Submitted documents

cc: Mr. Richard Butler
15731 Corsair
Houston, Texas 77053
(w/o enclosures)